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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 00-115

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 101.15 (2) (f) 1., Stats., provides that the Department of Commerce “shall cause the inspections of underground mines and similar establishments at least once every 2 months and shall cause the inspections of surface mines and similar establishments at least once each year.” In contrast, s. Comm 8.14 simply provides that the department may inspect mines, pits and quarries in order to determine compliance with ch. Comm 8 and, if a statutorily required inspection has not been performed, the department must notify the federal government that an inspection is due. In partial explanation of this rule provision, the analysis states that: “The requirements for inspections are revised by indicating that the department will not duplicate inspections performed by MSHA, but will notify MSHA when a required inspection has not been performed.” If the rule indicates that it is the intent of the department to not make the statutorily required inspections, what other statutory authority exists for the rule provision?

2. Form, Style and Placement in Administrative Code

a. In s. Comm 8.13 (3) and (4), each sentence should conclude with the phrase “under sub. (1).” Also, in sub. (3), the word “their” should be replaced by the phrase “the person’s.”

b. In s. Comm 8.15 (intro.), the federal code citation should be abbreviated as “30 CFR Parts 1 to 99.” A similar change should be made in the note so that the citation is “Title 30 CFR Parts 46, 56 and 57.”

c. The definitions section, s. Comm 8.16, should be placed after the purpose and scope sections of the rule. [See s. 1.02 (3), Manual.]

d. Current subch. III of ch. Comm 8 places references to federal standards in rule section titles and the rule text. Why is this form abandoned in s. Comm 8.21?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. Comm 8.06 (1), “any person” may petition the department for a hearing; however, in s. 101.02 (6) (e), Stats., cited in the rule, “any employer or other person” may petition the department for a hearing. “Employer” is defined in s. 101.01 (4), Stats., to include any firm, corporation, state, county, town, city, village, school district, sewer district, drainage district and other public or quasi-public corporation. Was “any employer” deliberately excluded from the rule? If it should be included, the definition of “employer” could be added in a note.

b. In s. Comm 8.06 (2), the definition of “local order” under s. 101.01 (8), Stats., should be included in a note.

c. In s. Comm 8.13 (4), “Mine Safety and Health Administration” should not be capitalized. [See s. 1.01 (4), Manual.] A similar change should be made in s. Comm 8.14 (2).